IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

CRP.No. 1352 of 2004()

AGAINST THE ORDER DATED 06/04/2004 IN IA 844/2002 IN OS.21/2002 of PRINCIPAL SUB COURT,KOLLAM

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REVN. PETITIONER: RESPONDENT/PLAINTIFF:

M.MANIKANTAN NAIR,
PROP. M.M.GAS AGENCY, MANESH MANDIRAM,
POOTHAKKULAM P.O., KOLLAM, REP. BY POWRER OF ATTORNEY HOLDER, SMT.P.SREEKUMARY,
POOTHAKKULAM VILLAGE, KOLLAM DIST.

BY ADV. SRI.K.V.SADANANDA PRABHU
SRI.T.GOPALAKRISHNAN

RESPONDENTS: PETITIONER IN THE I.A:

DR.SEBASTIAN,
RENIC HAVEN, P.B.NO.387 NEAR POLAYATHODU, KOLLAM.

BY ADV. SRI.M.V.THAMBAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. 3531 OF 2004
IN
C.R.P. NO.1352 OF 2004

DISMISSED

26/6/07 **SD/- M.N. KRISHNAN, JUDGE.**

[True Copy]

P.A. TO JUDGE.

M.N. KRISHNAN, J.

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C.R.P. NO. 1352 OF 2004

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Dated this the 26th day of June, 2007.

O R D E R

This revision petition is preferred against the order of Principal Sub Judge, Kollam in I.A.844/02 in O.S.21/02. It was an application filed by the petitioner under Order 38 Rule 10 CPC. The Court below, by virtue of its order, lifted the attachment on certain movables and disposed of the matter. It is against that decision the present revision is preferred.

2. The learned counsel for the revision petitioner has produced before this Court a decision of the Full Bench of this Court reported in **G.K. Prabhakaran & Co. v. David Traders (1972 KLJ 687)**. It was a case with respect to attachment of certain movable property belonging to the defendants. When a third party is claiming and objecting to attachment this Court held that the third party can invoke the inherent power of the Court only after the property is attached and not before it.

3. Order 38 Rule 8 deals with the adjudication of claim to property attached before judgment. So a perusal of

Order 38 Rule 8 would reveal that it must be the property attached before judgment. Or in other words, the cause of action for a third party arises only when his property is attached and attachment is effected. The difference between 1908 CPC Order 38 Rule 8 and 1976 CPC Order 38 Rule 8 is only with respect to the word that instead of the word 'investigation' the word 'adjudication' is added. Therefore, the decision rendered by the Court below is against the Full Bench decision of this Court which requires to be corrected as well under the supervisory jurisdiction of this Court and even if technically the CRP is found to be not maintainable, the Court is bound to correct the error committed by the Court below. Therefore, the order passed by the Court below is set aside and the said I.A. will stand dismissed.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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